

BULLETIN

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Update on Petition to Change Commission Rules

Last fall, the Maricopa County Attorney's Office filed a petition with the Arizona Supreme Court to change the Rules of the Commission on Judicial Conduct so that all complaints and final dispositions would become public. The court circulated the petition for public comment with a deadline of March 2, 2005. The deadline has now passed, and the court has taken the matter under consideration. A decision is not expected until this summer.

The commission submitted extensive comments on the petition along with an alternative proposal to limit disclosure to complaints in which there is a specific finding of judicial misconduct. Under this plan, only reprimands and recommendations for censure, suspension, removal or involuntary retirement would be made public. Dismissed complaints and minor disciplinary matters would remain confidential.

Comments in Support of the Petition

The court received comments from 15 other organizations or individuals. The primary supporters of the petition turned out to be prosecutors, the Arizona Newspapers Association, and a private citizen. The prosecutors association argues that openness is necessary to ensure fairness of the process and to build confidence in the community. It believes the public should have access to all complaints and that the Judicial Performance Review Commission should be able to see confidential discipline records. The newspaper association supports the petition because the citizens in a free society have a right to know and the press can assist the public and the Commission on Judicial Conduct by reviewing and analyzing complaints that are filed against judges. The lone comment from a public citizen emphasized the right of citizens to challenge public officials and noted that the judiciary has insulated itself from public scrutiny.

Comments in Opposition to the Petition

The comments filed by courts, judges' associations or individual judges focused on the potential misuse of confidential information in judicial elections and the delicate balance between judicial independence and accountability. Most courts favor the existing disciplinary system, but would support the changes proposed by the commission as long as the disclosure of confidential information is based on a finding of misconduct and not merely a warning or advisory letter. Public defenders and defense attorneys believe that the commission should provide greater public access to its decisions as long as the judiciary has reasonable protection from frivolous complaints. The state bar supports the disclosure of reprimands, but opposes the unfair use of information that might impact the independence of the judiciary or mislead the public about judges.

In the final analysis, the comments submitted to the supreme court reinforce the commission's observation that the fight over access to confidential disciplinary records boils down to finding the right balance between judicial independence and judicial accountability. While the public is entitled to know more about the conduct of judges, the indiscriminate disclosure of frivolous complaints can potentially harm the judiciary. The court's task over the next couple of months is to determine where to draw the line.

The Year in Review

The Commission on Judicial Conduct received 1,002 inquiries and 308 complaints in 2004. It resolved 20 cases with advisory letters, issued informal or private sanctions in 26 cases, and issued two public reprimands. The commission filed five formal cases with the supreme court, which resulted in the suspension of a justice of the peace and the public censure of three municipal court judges. One of the municipal court judges was also required to undergo additional training and mentoring, and a justice of the peace opted to resign before the court reached a final decision in his case.

The Judicial Ethics Advisory Committee issued four formal opinions during the year and responded to 202 requests for informal advice on ethical issues.

By law, the commission is responsible for staffing the Constable Ethics Committee, which investigates complaints against elected constables. The committee received six complaints against constables in 2004.

2004 Advisory Opinions

The Judicial Ethics Advisory Committee issued four opinions in 2004. The opinions are summarized here. To read the full text of the opinions, go to www.supreme.state.az.us/ethics and click on Judicial Ethics Advisory Opinions.

Opinion 04-01 (March 19, 2004)

Court employees may organize, promote, and participate in charitable projects—and may solicit contributions for those—as long as they do so voluntarily and not at the direction or urging of judges or court managers. Several other guidelines for participating in charitable activities are described in this opinion. Judges and judicial managers, as well as judicial staff under the direction and control of a judge, must refrain from expressing their charitable interests and must leave the operation and management of charitable activities to others.

Opinion 04-02 (April 14, 2004)

Incumbent judges are required to disqualify themselves in cases filed by their opponents in judicial elections involving attorneys. The opinion is restricted to *announced* candidates. Mere rumor of a candidacy is not sufficient to require disqualification, absent either personal bias, prejudice, or other extraordinary circumstances which raise a reasonable question as to the judge's impartiality. Successful incumbents are not required to disqualify themselves for a specific length of time following an election.

Opinion 04-03 (December 6, 2004)

A court may not accept contributions from a non-profit organization to assist the court in presenting a court-run symposium on mental health issues in the courts and may not actively solicit sponsorship funding. A for-profit organization may not help with sponsorship, and a for-profit or non-profit organization may not sponsor a specific activity. If the court is unable to accept financial sponsorship because of ethical constraints, it may relinquish the symposium to another group and assist it in organizing a symposium sponsored by other organizations.

Opinion 04-04 (December 16, 2004)

A judge may be inducted into a school district's hall of fame during a fund-raising dinner for student scholarships, subject to the specific conditions described in the opinion. The judge may be recognized for his achievements as a judge as well as for his involvement in the community as a lawyer, again subject to conditions.

New 2005 Advisory Opinion

Opinion 05-01 (February 9, 2005)

A judge may not hear cases involving a business co-owned by his friend, the chairman of his campaign committee. The judge may instruct his staff to issue a minute entry after an answer is filed that discloses the potential conflict and gives the parties an opportunity to object on the record. Moreover, the judge may not sign default judgments in favor of the friend's business in cases where the defendants do not appear.

Membership Changes

Judge **Harriett Chavez** (Superior Court, Surprise) and **Sheila S. Polk** (Yavapai County Attorney) joined the Commission on Judicial Conduct in January, replacing Judge **Barbara Mundell** and attorney **Nancy Greenlee**.

Judge **J. William Brammer, Jr.** (Court of Appeals, Tucson) was elected chair of the commission, and Judge **John C. Gemmill** (Court of Appeals, Phoenix) was elected vice chair. Dr. **Margaret C. Kenski** (public member, Tucson) continues to serve as commission secretary.

Judge **Wallace R. Hoggatt** (Superior Court, Bisbee) was appointed as chair of the Judicial Ethics Advisory Committee. Judge **Philip C. Espinosa** (Court of Appeals, Tucson) was appointed to the committee, replacing Judge **John Pelander**.